

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

UNITED STATES DISTRICT COURT : MIDDLE DISTRICT

JOE KING : CZ-9499 : NO:1:CV-00-1389

PLACE OF CONFINEMENT: SCI-WAYMART, P.O. BOX 256, WAYMART, PA. 18472

JOE KING, PETITIONER VS. RAYMOND COLLERAN, RESPONDENT

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION

FILED
HARRISBURG, PA
SEP 28 2000
MARY E. D'ANDREA, CLERK
Per MA
Deputy Clerk

1. name and location of court which entered the judgment of conviction under attack Court of Common Pleas of Dauphin County, Pennsylvania
2. Date of judgment of conviction March 12, 1996
3. Length of sentence eight (8) to twenty (20) years
4. Nature of offense involved (all Counts) aggravated assault
5. What was your plea? not guilty
6. If you pleaded not guilty, what kind of trial did you have? (a) Jury
7. Did you testify at trial? yes
8. Did you appeal from judgment of conviction? Yes

9. if you did appeal answer the following:

(a) name of court Court of Common Pleas of Dauphin County Pennsylvania

(b) Result Denied as untimely filed Post Conviction Relief Act Petition

(c) Date of result July 16, 1999, DKT NO: 1173 CD 1995

10. appealed to the Pennsylvania Superior Court, Docket Number 1301 MDA 1999
Result Affirmed Judgment of Lower Court on April 27, 2000.

11. Petition for Allowance of Appeal filed May 19, 2000 to the Supreme Court
of Pennsylvania Docket Number 364 MAL 2000.

Result Affirmed on August 22, 2000.

IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY--CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL
	:	
VS.	:	ACTION NO. 1173 C.D. 1995
	:	
JOHN FLEMMING, a/k/a JOE KING	:	

AMENDED PETITION IN SUPPORT OF THE
SUPPLEMENTAL (PCRA) PETITION, PUR-
SUANT TO PA. 42 C.S.A. §§ 9541-9551

TO: THE HONORABLE JOSEPH H. KLEINFELTER, JUDGE OF SAID COURT:

AND NOW, COMES PETITIONER, JOHN FLEMMING, PRO SE, THROUGH AND BY HIS ATTORNEY FRANCIS SOCHA, ESQUIRE, WHO RESPECTFULLY REQUEST THAT THIS HONORABLE COURT GRANT PETITIONER HIS FIRST RIGHTS OF APPEAL AND A REVIEW OF THE FOLLOWING MATTERS HEREIN, FOR THE FOLLOWING REASONS;

WITHIN THIS AMENDED PETITION, PETITIONER WILL SHOW CAUSE WHY HIS DIRECT APPEAL TO SUPERIOR COURT WAS NOT FILED IN THIS CASE AT ALL AFTER THE CONVICTION. PETITIONER WILL SHOW CAUSE TO THIS HONORABLE COURT EXACTLY WHY A TIMELY (PCRA) PETITION WAS NOT FILED IN THIS CASE, AND FINALLY, PETITIONER WILL SHOW CAUSE WHY IT IS PARAMOUNT FOR THIS HONORABLE COURT TO GRANT HIM THE RIGHT TO PROCEED WITH HIS AMENDED PETITION AND PETITION TO THIS COURT FOR THE PURPOSE OF A REVIEW OF THE CONSTITUTIONAL ISSUES SET FORTH IN THIS PETITION.

(STATEMENT OF FACT)

ON THE SAME DAY OF PETITIONER'S CONVICTION, MARCH 12, 1996, PETITIONER REQUESTED TO COUNSEL FOR DEFENSE, MICHAEL E. DUDA, ESQUIRE, TO FILE A DIRECT APPEAL TO SUPERIOR COURT OF PENNSYLVANIA ON THE ISSUES SET FORTH IN THIS PETITION. WHICH IS NOT HIND-SIGHT ISSUES, NOR ARE THEY FRIVOLOUS ISSUES, BUT ISSUES, WHICH WERE ACTED UPON BY COUNSEL DOING THE TRIAL, COULD HAVE RENDERED A DISMISSAL OR A LESSER CHARGE THAN AGGRAVATED ASSAULT, BUT AFTER THE CONVICTION, COUNSEL ASSURED PETITIONER THAT HE HAD FILED A DIRECT APPEAL TO SUPERIOR COURT AND HE WOULD FILE TIMELY BRIEFS AS ORDERED BY THE COURT.

ABOUT TWO MONTHS LATER, AFTER PETITIONER WAS INCARCERATED AND SERVING THE IMPOSED SENTENCE, HE CONTACTED COUNSEL, MR. DUDA, BY PHONE, TO FIND OUT THE STATUS ON THE DIRECT APPEAL THAT HE CLAIMED HE HAD FILED AFTER THE CONVICTION. MR. DUDA AGAIN ASSURED PETITIONER THAT HE HAD IN FACT FILED SAID APPEAL AND BRIEFS TO SUPERIOR COURT ON PETITIONER'S BEHALF. COUNSEL INDICATING THAT IT WOULD TAKE ABOUT 8 MONTHS TO GET A RULING FROM SUPERIOR COURT.

ABOUT 10 MONTHS AFTER PETITIONER WAS INCARCERATED, HE AGAIN TRIED TO CONTACT COUNSEL, MR. DUDA BY PHONE, BECAUSE PETITIONER HAD NOT HEARD ANYTHING FROM SUPERIOR COURT, NOR HAD HE HEARD ANYTHING FROM COUNSEL, COUNSEL WAS NOT IN HIS OFFICE.

AROUND THE LAST OF APRIL 1997, (ONE YEAR AFTER BEING INCARCERATED) PETITIONER AGAIN CONTACTED COUNSEL, MR. DUDA, BY PHONE, INQUIRING ABOUT THE STATUS OF HIS ALLEGED DIRECT APPEAL HE CLAIMED THAT HE HAD FILED TO SUPERIOR COURT. THIS WAS THE THIRD TIME THAT MR. DUDA HAD ASSURED PETITIONER THAT AN APPEAL AND BRIEFS HAD BEEN FILED BY HIM TO SUPERIOR COURT, AND WAS PENDING.

IT WAS SOMETIME IN MAY 1998, THAT PETITIONER NO LONGER BELIEVED MR. DUDA'S CLAIM, THAT HE HAD FILED A DIRECT APPEAL AND BRIEFS TO SUPERIOR COURT. IT WAS AT THAT TIME THAT PETITIONER WROTE, REQUESTED FROM THE CLERK OF COURT THE INFORMATION FROM HIS CASE, AS TO WHAT HAD BEEN FILED IN HIS BEHALF SINCE THE CONVICTION. THERE WAS NO ENTRY MADE ON THE DOCKET TO SUPPORT MR. DUDA CLAIM THAT HE HAD FILED A DIRECT APPEAL AND BRIEFS TO SUPERIOR COURT, IN FACT NO APPEAL OR BRIEFS WERE FILED.

AT THIS TIME IN 1998, THE FILING OF A DIRECT APPEAL TO SUPERIOR COURT HAD EXPIRED, MOREOVER, THE TIME ALLOWED TO FILE A TIMELY (PCRA) PETITION TO THE COURT OF COMMON PLEAS HAD ALSO EXPIRED. COUNSEL'S KNOWINGLY FALSIFICATION AND DECEPTION TO PETITIONER DENIED PETITIONER HIS FIRST RIGHT OF APPEAL AT THE APPELLATE LEVEL, IN VIOLATION OF DUE PROCESS, OBSTRUCTING PROCEDURAL DUE PROCESS. U.S.C.A. CONST. AMENDS. 6, 14.

THIS HONORABLE COURT MUST AGREE THAT COUNSEL'S DECEPTION AND DELIBERATE FABRICATION THAT HE HAD FILED THE SAID DIRECT APPEAL AND BRIEFS TO SUPERIOR COURT IN PETITIONER'S BEHALF, AND HE MAINTAINED THAT FABRICATION FOR A PERIOD OF ONE AND A HALF YEARS, THIS NOT ONLY PREJUDICED PETITIONER, BUT DENIED HIM HIS APPELLATE RIGHT OF APPEAL, WHICH DENIED PETITIONER ANY REVIEW AT ALL OF CONSTITUTIONAL ISSUES AT THE APPELLATE LEVEL.

COUNSEL'S DELIBERATE FABRICATION AND INTENTIONAL DECEPTION IS CONSISTENT WITH HIS INEPTNESS DOING THE TRIAL WHERE HE FAILED TO PRESENT THE FACTS TO THE COURT AS TO WHAT HAD ACTUALLY HAPPENED, AS TO THE INCIDENT, VERSUS THE CHARGES ALLEGED WHICH THE INCIDENT DID NOT RISE TO THE LEVEL OF THE CHARGES.

COUNSEL'S INCOMPETENCE, DOING AND AFTER THE CONVICTION IN THIS CASE, HIS INTENTIONAL AND KNOWINGLY FABRICATION AND DECEPTION THAT HE HAD FILED AN APPEAL AND BRIEFS TO SUPERIOR COURT, (TIMELY), AND THEN MAINTAINED THAT FABRICATION FOR A PERIOD OF ONE AND A HALF YEARS, **CANNOT BE CONSIDERED BY THIS HONORABLE COURT AS BEING REASONABLE**, AND CANNOT BE CONSIDERED BY THIS COURT AS BEING A WAY TO ASSIST PETITIONER IN HIS LEGAL MATTER, AS TO HIS RIGHT TO APPEAL.

THIS HONORABLE COURT MUST AGREE THAT BY COUNSEL'S INEPTNESS, HIS DELIBERATE FABRICATION AND DECEPTION, ALTHOUGH, IS NOT TO BE CONSIDERED TO BE REASONABLE, THE STANDARDS SET BY THE UNITED STATES SUPREME COURT IN, STRICKLAND V. WASHINGTON.

IN THE CASE CITED, LOVE V. FULCOMER, AT 729 F. SUPP. 1514, (E.D. PA. 1991); EVITTS V. LUCEY, 105 S. CT. 830. PRETAINING TO INEFFECTIVE ASSISTANCE OF COUNSEL AT BEST, COUNSEL COULD HAVE FILED A DIRECT APPEAL TO SUPERIOR COURT AS REQUESTED BY PETITIONER AFTER THE CONVICTION, THIS WOULD HAVE BEEN CONSIDERED AS REASONABLE UNDER THE 6th, 14th AMENDMENTS OF THE CONSTITUTION, AND UNDER PENNSYLVANIA CONSTITUTION, ARTICLE 5 § 9; (RIGHT TO APPEAL), AND UNDER PA. 18 C.S. § 9151.

THIS HONORABLE COURT MUST CONSIDER THE FACT IN LAW THAT OBSTRUCTION OF JUSTICE COMES IN MORE THAN ONE FORM OR ACT, TO INTERFERE WITH DUE PROCESS INTENTIONALLY OR KNOWINGLY DO IT. HOWEVER, CANNOT BE EXCUSED BY THIS HONORABLE COURT WITHOUT A REMEDY, COUNSEL'S INEPTNESS AND INTENTIONAL DECEPTION CANNOT BE IMPOSED ON PETITIONER BECAUSE OF HIS FAILURE TO BE TRUTHFUL, WHICH DENIED AND PREVENTED THE TIMELY FILING OF A DIRECT APPEAL AND TIMELY FILING OF A (PCRA) PETITION.

THIS HONORABLE COURT MUST KNOW THAT BY COUNSEL'S INEPTNESS AND FAILURE TO GIVE PETITIONER ADEQUATE REPRESENTATION DOING AND AFTER THIS CONVICTION, DOES NOT IMPLY IN ANY WAY THAT PETITIONER WAIVERED HIS APPELLATE RIGHTS, OR RIGHT TO APPEAL, THE DECEPTION WAS DESIGNED BY COUNSEL AND NOT PETITIONER.

(PROCEDURAL HISTORY)

PETITIONER WAS CHARGED WITH THE CRIME OF VIOLATING PENNSYLVANIA STATUTE 18 P.S. § 2702, (AGGRAVATED ASSAULT), AND WAS TRIED IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY-CRIMINAL DIVISION, BEFORE THE HONORABLE, J. KLEINFELTER, ON MARCH 11, 1996, PETITIONER'S PLEA WAS NOT GUILTY, PETITIONER WAS FOUND GUILTY OF SAID CHARGE BY JURY ON, MARCH 12, 1996, AND PETITIONER WAS SENTENCED ON MARCH 24, 1996, TO SERVE A TERM OF, (8 TO 20) YEARS IMPRISONED. PETITIONER STARTED TO SERVE HIS IMPOSED SENTENCE ON MAY 16, 1996.

TRIAL FACTS)

AFTER PETITIONER WAS CONVICTED AND SENTENCED, HIS COUNSEL, MICHAEL E. DUNN, ESQUIRE, (PUBLIC DEFENDER) FROM DAUPHIN COUNTY, COULD NOT CONCEDE TO SUPERIOR COURT THAT HE WAS INEFFECTIVE IN THIS PROCEEDING, THEN HE DECEIVED PETITIONER FOR ONE YEAR AND A HALF INTO BELIEVING THAT HE HAD FILED A DIRECT APPEAL AND BRIEFS TO SUPERIOR COURT IN PETITIONER'S BEHALF, WHEN HE KNEW THIS NOT TO BE TRUE, THIS DENIED PETITIONER THE RIGHT OF DIRECT APPEAL, AS OF FIRST RIGHT. COUNSEL ALSO FAILED TO FOLLOW HIS CONSTITUTIONAL OBLIGATION AND PETITIONER'S RIGHT WHEN HE FAILED TO FILE A DIRECT APPEAL TO SUPERIOR COURT AS REQUESTED BY PETITIONER THE DAY AFTER THE CONVICTION, COUNSEL ASSURING PETITIONER THAT HE HAD IN FACT FILED SUCH APPEAL AND BRIEFS. COUNSEL KNOWING THAT HIS PERFORMANCE IN THE TRIAL WAS DEFICIENT, HIM KNOWING THAT HE HAD NOT PERFORMED TO THE STANDARDS OF THE GUARANTEE OF EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6th AMENDMENT OF THE CONSTITUTION, OR UNDER THE STANDARDS SET BY THE UNITED STATES SUPREME COURT IN STRICKLAND V. WASHINGTON, 104 S. CT. 2052; COUNSEL INTENTIONALLY AND KNOWINGLY DECEIVED PETITIONER AND FAILED TO FILE APPELLANT'S BRIEF ON HIS FIRST APPEAL OF RIGHT.

THE RECORD WILL SHOW THAT COUNSEL WAS INEFFECTIVE IN THIS TRIAL WHEN HE ED TO FOLLOW PETITIONER'S ADVICE AND QUESTION OR ATTACK THE CIRCUMSPECT EV BEING PUT BEFORE THE COURT BY COMMONWEALTH WITNESSES, AS TO THE CREDIBILITY RELIABILITY AND SUFFICIENCY OF THAT CIRCUMSPECTED EVIDENCE WHICH WAS FABRI AND DESIGNED TO SUIT THE INVENTED STORY OF WHAT HAD ACTUALLY HAPPENED, AGA THE WEIGHT OF THE CHARGES.

COUNSEL HAD INFORMATION AND EVIDENCE PRIOR TO TRIAL TO PRESENT TO THE C TO SHOW EXACTLY WHAT HAD HAPPENED, AND THE FACT THAT PETITIONER WAS NOT, A NO INTENTION AT ALL OF ASSAULTING ANYONE, BUT WAS ACTING TO DEFEND HIMSELF BEING ASSAULTED, AND WHAT HAPPENED DID NOT RISE TO THE LEVEL OF AGGRAVATED AULT, BUT COUNSEL FAIL TO PUT THIS INFORMATION OF FACT BEFORE THE COURT IN PROCEEDING. COUNSEL KNOWING THAT PROSECUTION HAD NO SUCH EVIDENCE THAT COU RISE TO THE LEVEL OF THE CHARGES OR THE SENTENCE.

COUNSEL WAS ALSO INEFFECTIVE IN THIS PROCEEDING WHEN HE FAILED TO PRESEN PETITIONER'S COMPLETE SIDE OF THE STORY TO THE COURT AS TO WHAT HAD ACTUAL PENDED, PETITIONER HAVE A CONSTITUTIONAL RIGHT FOR HIS SIDE TO BE HEARD, SO COURT, (JURY) CAN MAKE A FAIR AND RATIONAL DETERMINATION BASED ON HEARING B SIDES IN ITS ENTIRETY. THIS IS NOT COUSIDERED TO BE HIND SIGHT, BUT INEPTNI ON COUNSEL'S BEHALF.

COUNSEL WAS INEFFECTIVE IN THIS TRIAL WHEN HE DID NOT FOLLOW PETITIONER VICE AND FILE A **TIMELY MOTION** TO THE COURT FOR DISMISSAL AND RELEASE FROM C TODAY, OR ANOTHER REMEDY, BECAUSE OF THE FAILURE TO GIVE PETITIONER A **SPEEDY AL, PURSUANT TO (PA.RECRIM.P.) RULE 1100**, COUNSEL FILING THE SAID MOTION ON DAY OF THE TRIAL, AGAIN DENYING PETITIONER DUE PROCESS, AND DENYING HIM ANY MEDY FOR THE VIOLATION UNDER RULE 1100. AGAIN VIOLATING PETITIONER'S RIGHTS DER THE SIX AND FOURTEENTH AMENDMENTS. DENYING PETITIONER THE RIGHT TO A S TRIAL, AND NOT TO EXCEED 180 DAYS, IF INCARCERATED, BEFORE GOING TO TRIAL. RECORD WILL SHOW THAT PETITIONER WAS ARRESTED ON **MARCH 21, 1995**, AND REMAIN INCARCERATED UNTIL THE TRIAL ON, **MARCH 11, 1996, WHICH IS 355 DAYS**, THIS DE WAS NOT PETITIONER'S RESPONSIBILITY, DUE DILIGENCE MUST PREVAIL. COUNSEL'S URE TO COMPLY AND FILE A TIMELY MOTION TO THE COURT, AND FAILING TO SHOW AN URATE TIME PETITIONER SPENT IN CUSTODY PRIOR TO GOING TO TRIAL, THE UNTIME TION FILED BY COUNSEL WAS DISMISSED BY THE COURT, SEE EXHIBITS-1-AND 2.

THIS HONORABLE COURT MUST AGREE WITH THE LAW, RULE 1100, IS NOT BASED ON THE CHARGES ARE ABOUT, NOR IS IT BASED ON ANY PRECEPTION OF GUILT OR INNOC RULE 1100 IS A GUARANTEE UNDER THE 6th AND 14th AMENDMENTS TO A SPEEDY TRIA THIS HONORABLE COURT MUST KNOW THAT RULE 1100 IN THIS PARTICULAR CASE, **WAS AND HAS NOT BEEN WAIVERED BY PETITIONER** BECAUSE OF COUNSEL'S INEPTNESS, INE TIVENESS TO DO AS INSTRUCTED BY PETITIONER IN THIS TRIAL. THE COMMONWEALTH ING THAT PETITIONER WAS IN CUSTODY DOING THE TIME INDICATED, AND WAS AVAILA FOR TRIAL DOING THIS TIME. PETITIONER'S RIGHTS WERE VIOLATED UNDER RULE 1100 AND STANDS TO BE CORRECTED BY THIS HONORABLE COURT.

IN THIS PARTICULAR CASE, THERE ARE SUBSTANTIAL ISSUES OF ARGUABLE MERIT INVOLVED IN THIS APPEAL, INCLUDING, BUT NOT LIMITED TO, THE DENIAL OF RULE 1 (PA.R.CRIM.P.).

COUNSEL WAS AGAIN INEFFECTIVE IN THIS TRIAL WHEN HE WAS ADVISED BY PETITIONER THAT THE JUDGE RESIDING IN THIS CASE MAY PRESENT A CONFLICT OF INTEREST WHICH MAY PREJUDICE PETITIONER IF CONTINUED, PETITIONER INFORMING COUNSEL THAT JUDGE KLEINFELTER WAS A PRIOR PROSECUTOR FOR THE COMMONWEALTH IN TWO PRIOR TRIALS WHERE HE WAS THE DEFENDANT. PETITIONER REQUESTING COUNSEL TO FILE A MOTION REQUESTING JUDGE KLEINFELTER TO DISQUALIFY OR RECUSE HIMSELF FROM THIS PROCEEDING BASED ON THE POTENTIAL CONFLICT OF INTEREST, COUNSEL AGAIN DENIED PETITIONER DUE PROCESS, AND FAILED TO FILE SAID MOTION KNOWING THAT THE JUDGE RESIDING IN PROSECUTION FOR THE COMMONWEALTH IN DAUPHIN COUNTY, WHERE HE HAD PROSECUTED CASES WHERE PETITIONER WAS DEFENDANT, AND NOW HE WAS RESIDING OVER THIS CASE WITH THE JUDGE, WHICH MAY PRESENT A BIAS OR PREJUDICE TOWARDS PETITIONER DOING THE TRIAL OR IN SENTENCING.

WITH ALL DUE RESPECT TO JUDGE KLEINFELTER, COUNSEL WAS AGAIN EFFECTIVE IN THIS TRIAL, WHEN IT BECAME APPARENT THAT THE COURT, JUDGE KLEINFELTER RECOGNIZED PETITIONER FROM THE PRIOR TRIALS WHERE HE WAS PROSECUTION FOR THE COMMONWEALTH. PETITIONER WAS DEFENDANT, JUDGE KLEINFELTER MAKING THE STATEMENT THAT PETITIONER'S LIFE WAS A LIFE OF CRIME, DOING THE TRIAL AND DOING THE SENTENCING, BASED ON HIS KNOWLEDGE OF THE PRIOR PROSECUTIONS WHERE HE WAS THE PROSECUTOR AND PETITIONER WAS THE DEFENDANT.

COUNSEL WAS NOT ONLY INEFFECTIVE DOING THIS TRIAL BY FAILING TO REPRESENT PETITIONER'S SIDE OF THE STORY IN ITS ENTIRETY AND OTHER SAID PERTINENT ISSUES THEREIN, COUNSEL FAILURE TO FILE MOTIONS TO THIS COURT AS REQUESTED BY PETITIONER, MOREOVER, COUNSEL WAS INEFFECTIVE ON THE APPELLATE LEVEL, WHEN INTENTIONALLY AND KNOWINGLY DECEIVED PETITIONER OVER ONE AND A HALF YEARS AFTER THE CONVICTION BY CLAIMING THAT HE HAD FILED A DIRECT APPEAL AND BRIEFS TO THE SUPERIOR COURT ON PETITIONER'S BEHALF, AND MAINTAINED THAT FALSIFICATION UNTIL PETITIONER RECEIVED THE DOCKETS FROM HIS CASE, WHICH PROVED THAT COUNSEL HAD LIE BUT IN THAT DECEPTION, VIOLATIONS HAD OCCURRED, WHICH DENIED PETITIONER THE RIGHT TO FILE A TIMELY DIRECT APPEAL, AND DENIED PETITIONER THE RIGHT TO FILE A TIMELY (PCRA) PETITION, DENYING PETITIONER HIS APPELLATE RIGHT ON FIRST RIGHT OF APPEAL, COUNSEL'S DECEPTION NOT ONLY PREJUDICED PETITIONER CASE, BUT CAUSED THE DELAY IN FILING, IN VIOLATION UNDER THE 6th, 14th AMENDMENTS RIGHTS. THIS VIOLATION NOT ONLY DENIED PETITIONER ADVERSARIAL PRESENTATION OF CLAIMS, ANY RIGHT TO APPELLATE REVIEW, BUT WOULD SERVE AS THE PURPOSE OF COVERING UP HIS PERFORMANCE DOING THE TRIAL, WHERE COUNSEL FAILED TO CALL PETITIONER'S WITNESSES TO TESTIFY AS TO THE CREDIBILITY AND RELIABILITY OF COMMONWEALTH'S WITNESSES.

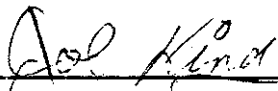
THIS TESTIMONY FROM PETITIONER'S WITNESSES, IF CALLED, COULD HAVE SHOWN THE WITNESSES FOR THE COMMONWEALTH WAS NOT TO BE BELIEVED AS TO THE INCIDENT AND WHAT CAUSED IT, WHICH AGAIN WOULD NOT RISE TO THE LEVEL OF THE CHARGES. PETITIONER'S WITNESSES WAS, POLICE OFFICER, LT. JOHN GASHORT, OFFICER WILLIE H AND, OFFICER BRIAN JACKSON, ALL OF DAUPHIN COUNTY, HARRISBURG, PA.

THIS HONORABLE COURT MUST AGREE THAT IT IS NOT COUNSEL OR THE COURT, NOR PROSECUTION THAT GUARANTEES' EFFECTIVE ASSISTANCE OF COUNSEL IN A CRIMINAL PROCEEDING, IT IS THE UNITED STATES CONSTITUTION, UNDER THE 6th AND 14th AMENDMENT THAT GUARANTEES A DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL IN A CRIMINAL PROCEEDING, AND IT IS COUNSEL'S RESPONSIBILITY TO CARRY OUT THAT GUARANTEE TO PROVIDE HIS CLIENT WITH ADEQUATE ADVERSARIAL PRESENTATION OF CLAIMS BEFORE A COURT OF LAW. IN THAT GUARANTEE, UNDER THE CONSTITUTION, THERE ARE NO PROVISIONS ALLOW COUNSELS TO DENY THAT GUARANTEE. COUNSEL'S PERFORMANCE IN THIS TRIAL NOT BE CONSIDERED AS BEING REASONABLE.

THE STANDARDS WAS SET BY THE UNITED STATES SUPREME COURT IN STRICKLAND V. WASHINGTON, (THE TWO PRONG TEST) TO DETERMINE INEFFECTIVE ASSISTANCE OF COUNSEL IN THIS TRIAL, THE RECORD WILL SHOW THAT COUNSEL FAIL TO MEET THE STANDARDS EVERY WAY, AND FAILED TO MEET THE STANDARDS ON THE APPELLATE LEVEL ALSO. SEE EVITTS V. LUCEY, 105 S.CT. 830; HOLDING THAT, DEFENDANT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON FIRST APPEAL.

WHEREFORE, FOR EACH OF THE FOREGOING REASONS, PETITIONER RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT ALLOW THIS PETITION AND AMENDED PETITION, BASED ON THE FACTS WITHIN THIS PETITION WHICH BASED ON THE CONSTITUTIONALITY OF THE ISSUES PURSUANT TO (P.R.A.P.) RULE 1112, AND PENNSYLVANIA CONSTITUTION, ARTICLE 1 AND ARTICLE 5 § 9, PA. STATUTE 18 C.S.A. § 5105-9151.

RESPECTFULLY SUBMITTED,


 JOE KING, PRO SE PETITIONER
 CZ9499 E-1
 P.O. BOX 256
 WAYMART, PA. 18472-0256

THROUGH AND BY HIS ATTORNEY,
 FRANCIS M. SOCHA
 2201 NORTH SECOND STREET
 HARRISBURG, PA. 17110

ARGUMENT
INEFFECTIVE ASSISTANCE OF COUNSEL

1. AS STATED, THIS HONORABLE COURT MUST AGREE THAT IT IS NOT COUNSEL THAT GUARANTEES EFFECTIVE ASSISTANCE OF COUNSEL, IT IS THE 6th AMENDMENT OF THE CONSTITUTION THAT GUARANTEES A DEFENDANT THAT RIGHT IN A PROCEEDING, AND IF COUNSEL FAIL TO CARRY OUT THAT GUARANTEE IN VIOLATION OF THE 6th AND 14th AMENDMENTS THEN COUNSEL'S PERFORMANCE WOULD AMOUNT TO NO REPRESENTATION AT ALL. CITED STRICKLAND V. WASHINGTON, 104 S.CT. 2052, HELD THAT IF COUNSEL'S PERFORMANCE IN A CRIMINAL PROCEEDING FALLS BELOW THE STANDARDS SET BY THE UNITED STATES SUPREME COURT IN THIS CASE, THEN COUNSEL IS IN VIOLATION OF THESE STANDARDS. COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, AND THAT A REASONABLE PROBABILITY EXISTS THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. SEE: AVERY V. ALABAMA, 509 U.S. 312-322.

2. IN THIS TRIAL, COUNSEL'S FAILURE TO PRESENT THE FACTS TO THE COURT, (JURY) HE KNEW THEM TO BE, AND FAILURE TO CALL SAID WITNESSES, COUNSEL'S FAILURE TO FILE SAID MOTIONS TO THE COURT THAT PETITIONER HAD DEMANDED THAT HE FILE, COUNSEL'S PERFORMANCE IN THIS TRIAL CANNOT BE CONSIDERED TO BE STRATEGY OR TACTICS USED BY COUNSEL TO REPRESENT PETITIONER'S BEST INTEREST, BUT A FAILURE TO PERFORM HIS DUTY AS COUNSEL AND FOLLOW THE INSTRUCTIONS WHICH WAS GIVEN TO HIM BY PETITIONER. CONSTITUTIONAL GUARANTEE OF EFFECTIVE ASSISTANCE OF COUNSEL CANNOT BE SATISFIED BY MERE FORMAL APPOINTMENT OF COUNSEL. EVITTS V. LUCEY, 105 S.Ct. 830; SEE UNITED STATES ex rel, THOMAS V. LEARY, 856 F.2d 1011.

MOTION TO COURT PURSUANT TO RULE 1100, (PRCP)

1. **AGAIN**, IN THIS PROCEEDING WHERE COUNSEL PERFORMANCE FELL BELOW OBJECTIVE STANDARDS OF REASONABLENESS, WHEN HE FAILED AND REFUSED TO FILE A TIMELY MOTION TO THE COURT PURSUANT TO **RULE 1100**, COUNSEL BEING INFORMED THAT PETITIONER HAD PASSED THE LIMITATION TO A SPEEDY TRIAL UNDER RULE 1100, BY HIM BEING IN CUSTODY FOR **355 DAYS** BEFORE COMING TO TRIAL. SEE EXHIBIT-2: FROM MARCH 21, 1995, TO MARCH 11, 1996.

2. THE RIGHT TO A SPEEDY TRIAL HAS BOTH CONSTITUTIONAL AND STATUTORY UNDERPINNINGS, FEDERAL STATUTES OF LIMITATIONS AND THE DUE PROCESS CLAUSE PROTECT DEFENDANTS AGAINST INTENTIONAL AND PREJUDICIAL PROSECUTION DELAY. THE 6th AMENDMENT SPEEDY TRIAL GUARANTEE.

3. THE 6th AMENDMENT PROVIDES THAT IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, U.S.CONST. AMEND. VI. THE SIXTH AMENDMENT SPEEDY TRIAL GUARANTEE IS **BINDING** ON THE STATES THROUGH THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT. SEE: KLOPPER V. NORTH CAROLINA, 386 U.S. 213-222-23.

4. THE FIFTH AMENDMENT PROVIDES THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. AMEND. V, THE 14th AMENDMENT IMPOSES THE IDENTICAL LIMIT ON THE STATES. U.S. CONST. AMEND. XIV. SEE BERKETT V. CUNNINGHAM, 826 F.2d 1208-25-26. (3rd CIR.)

CONT.

SPEEDY TRIAL PROCEEDING TO RULE 1100

5. THE SPEEDY TRIAL ACT OF 1974 AND OTHER FEDERAL STATUTES AND THE FEDERAL RULES OF CRIMINAL PROCEDURE PROTECT DEFENDANTS FROM UNDUE PREACCUSATION AND POSTACCUSATION DELAY. 18 U.S.C. §§ 3161-3174 (1988) (SPECIFYING TIME LIMITS BETWEEN ARREST, INDICTMENT, AND TRIAL AND PERMISSIBLE DELAYS WITHIN EACH PERIOD). SEE: (FED. R. CRIM. P. 48 (b) (AUTHORIZING COURTS TO DISMISS INDICTMENTS FOR GOVERNMENT'S UNNECESSARY DELAY); PETITIONER IN THIS TRIAL NEVER WAIVERED HIS PROTECTED RIGHT UNDER RULE 1100, BECAUSE OF COUNSEL'S INEFFECTIVENESS AND FAILURE TO FILE THE MOTION FOR DISMISSAL OF CHARGE AND TRIAL.

**DISQUALIFICATION OR RECUSAL OF JUDGE UNDER
(PENN. CRIM. PROCEDURE) SECTION 10.14**

1. COUNSEL WAS AGAIN INEFFECTIVE WHEN HE AGAIN VIOLATED PETITIONER'S DUE PROCESS RIGHTS, AFTER PETITIONER MAKING COUNSEL AWARE PRIOR TO THE TRIAL THAT HONORABLE JUDGE KLEINFELTER WHO WAS RESIDING OVER THIS CASE, WAS THE PROSECUTOR FOR THE COMMONWEALTH IN (TWO) PRIOR TRIALS WHERE PETITIONER WAS THE DEFENDANT AND WAS BELIEVED THAT THE JUDGE RECOGNIZED PETITIONER FROM THOSE PRIOR TRIALS. HIS STATEMENT, MAKING COUNSEL AWARE OF THE POTENTIAL CONFLICT OF INTEREST AND BIAS AND PREJUDICE THIS MAY CAUSE IN THIS PROCEEDING. PETITIONER REQUESTING COUNSEL TO FILE A MOTION TO THE COURT ASKING JUDGE KLEINFELTER TO RECUSE HIMSELF FROM THIS PROCEEDING IN PROTECTION OF PETITIONER'S RIGHTS, COUNSEL REFUSED TO FILE THAT MOTION TO PROTECT HIS CLIENTS RIGHTS.

2. DUE PROCESS REQUIRES THAT A JUDGE NOT APPEAR BIASED, WHICH MEANS THAT A JUDGE CANNOT HAVE EVEN THE APPEARANCE OF BEING BIASED OR CONFLICT OF INTEREST IN A CRIMINAL PROCEEDING. IF THE APPEARANCE OF JUDICIAL BIAS OR PREJUDICE EXISTS EITHER AGAINST OR IN FAVOR OF A PARTY, 28 U.S.C. § 144 AND § 455 PROVIDE MECHANISMS FOR THE JUDGE'S RECUSAL. In re MURCHISON, 349 U.S. 133, 136-39. U.S. V. DIAZ, 523 F.2d 99, 100.

3. SEE PENNSYLVANIA RULES OF COURT) UNDER CODE OF JUDICIAL CONDUCT:

- CANON:**
1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.
 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES.
 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND INDEPENDENTLY.
 - C. DISQUALIFICATION: A JUDGE SHOULD DISQUALIFY HIMSELF IN A PROCEEDING IN WHICH HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED;

IN DOING A CRIMINAL PROCEEDING, A JUDGE RESIDING OVER ANY SUCH PROCEEDING SHOULD NOT HAVE A FIXED BIAS OR PREJUDICE FOR OR AGAINST THE DEFENDANT, OR PERSONAL KNOWLEDGE ABOUT DEFENDANT IN A PRIOR PROCEEDING WHERE HE WAS PROSECUTOR FOR THE COMMONWEALTH, AND BECAME AWARE OF THE PRIOR TRIALS DOING THE PROCEEDING NOW. JUDGE, WHICH MAY CONSTITUTE A BIAS OR PREJUDICE TOWARDS DEFENDANT.

INEFFECTIVE ASSISTANCE OF COUNSEL AT APPELLATE LEVEL:

1. **MOREOVER**, COUNSEL WAS AGAIN INEFFECTIVE AT THE APPELLATE LEVEL, WHEN HE TO FILE A BRIEF TO SUPERIOR COURT, ON FIRST RIGHT OF APPEAL, IN PETITIONER'S HALF AFTER TRIAL. COUNSEL KNOWING AND BEING MADE AWARE OF THE FACT THAT IT WAS HIS CONSTITUTIONAL DUTY TO FILE BRIEF TO SUPERIOR COURT ON PETITIONER'S FIRST RIGHT TO APPEAL. **COUNSEL FAILED TO DO SO.** LOVE V. FULCOMER, 729 S.SUPP. 151 (U.S. DISTRICT COURT FOR THE EASTERN DISTRICT, (1990))
2. IN THE CASE CITED, LOVE V. FULCOMER, SENIOR DISTRICT JUDGE, JOSEPH S. LOPEZ HELD THAT PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY APPELLATE COUNSEL'S FAILURE TO FILE BRIEF ON DIRECT APPEAL, THEREBY PRECLUDING ADVERSARIAL PRESENTATION OF CLAIMS AND ANY RIGHTS TO APPELLATE REVIEW AT ALL.
CRIMINAL LAW: 641.13 (7) CRIMINAL APPELLANT IS CONSTITUTIONALLY ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL ON HIS FIRST APPEAL AS OF RIGHT. U.S.C.A. CONST. AMEND. 6.
3. REPRESENTATION AFFORDED CRIMINAL DEFENDANT WILL BE CONSIDERED OBJECTIVELY **REASONABLE** ONLY WHERE DEFENDANT CAN IDENTIFY ACTS OR OMISSIONS OF HIS COUNSEL THAT COULD NOT BE RESULT OF REASONABLE PROFESSIONAL JUDGMENT. U.S.C.A. CONST. AMEND. 6.
4. WHILE THERE IS STRONG PRESUMPTION THAT ATTORNEY'S CONDUCT FALLS WITHIN WIDE RANGE OF REASONABLE PROFESSIONAL ASSISTANCE, **FAILURE** OF COUNSEL TO FILE BRIEF ON ACCUSED'S BEHALF **CANNOT** BE CONSIDERED OBJECTIVELY REASONABLE. U.S.C.A. CONST. AMEND. 6
5. COUNSEL MUST FUNCTION AS ADVOCATE, ACTIVELY PROMOTING HIS CLIENT'S POSITION BY SCRUTINIZING RECORD FOR ERRORS IN PRESENTING LEGAL ARGUMENTS IN HIS CLIENT'S FAVOR, TO RENDER EFFECTIVE ASSISTANCE AT APPELLATE LEVEL; THUS, AT MINIMUM, COUNSEL **MUST FILE BRIEF TO PERFORM EFFECTIVELY AS APPELLATE ADVOCATE.** U.S.C.A. CONST. AMEND. 6.
6. **FAILURE** OF APPELLANT COUNSEL TO FILE BRIEF ON ACCUSED'S BEHALF ON DIRECT APPEAL WAS FUNCTIONAL EQUIVALENT OF **NO REPRESENTATION AT ALL**, WARRANTING PRESUMPTION OF PREJUDICE (IN) CONTEXT OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, ESPECIALLY WHERE SUCH FAILURE PRECLUDED NOT ONLY ADVERSARIAL PRESENTATION OF CLAIMS, BUT ALSO ACCUSED'S RIGHT TO ANY APPELLATE REVIEW AT ALL. U.S.C.A. CONST. AMEND. 6.
RIGHT OF ACCESS TO COURT: SEE: BOUNDS V. SMITH, 430 U.S. 817, 828, THE CONSTITUTIONAL FUNDAMENTAL RIGHT TO ADEQUATE, EFFECTIVE AND MEANINGFUL ACCESS TO COURTS TO CHALLENGE VIOLATIONS OF CONSTITUTIONAL RIGHTS): JOHNSON V. AVERY, 393 U.S. 483, 485. SEE: JOHN L. V. ADAMS, 969 F.2d 228, 233-37. (6th CIR. 1992)

PETITIONER FINALLY ASSERTS TO THIS HONORABLE COURT THAT IN THIS TRIAL, CONSTITUTIONAL RIGHTS WERE IGNORED AND VIOLATED UNDER THE 1st, 5th, 6th AND 7th AMENDMENTS OF THE U.S. CONSTITUTION, AND VIOLATIONS UNDER PENNSYLVANIA CONSTITUTION, ARTICLE 1 § 9, ARTICLE 5 § 9; PA. STATUTES, 18 C.S.A. 5105-9151.

THESE CONSTITUTIONAL VIOLATIONS OF PETITIONER'S RIGHTS IN THIS PROCEEDING MADE IT IMPOSSIBLE FOR PETITIONER TO HAVE RECEIVED A FAIR AND IMPARTIAL TRIAL AS PROCRIBED BY LAW, PETITIONER WAS PREJUDICED BOTH DOING THIS TRIAL AND AFTER THE CONVICTION, COUNSEL'S INEPTNESS AND INEFFECTIVENESS IS VERY APPARENT ON THE FACE OF THE RECORD, AND THE FACT THAT HIS DECEPTION THAT HE HAD FILED A DIRECT APPEAL AND BRIEFS TO SUPERIOR COURT, (TIMELY) WAS A FABRICATION WHICH WAS PROVED BY THE DOCKETS THAT NO APPEAL OR BRIEFS WAS FILED AT ALL, WHICH AMOUNTS TO AN OBSTRUCTION OF JUSTICE, OR OBSTRUCTION OF DUE PROCESS AND OBSTRUCTION OF PROCEDURAL DUE PROCESS, WHICH IS THE SAME.

COUNSEL'S DECEPTION WOULD SERVE TO GIVE A FALSE APPEARANCE THAT PETITIONER HAD FAILED TO FILE DIRECT APPEAL TO SUPERIOR COURT, AND AGAIN FAILED TO FILE A TIMELY (PCRA) PETITION TO THE COURT, TO GIVE THE IMPRESSION THAT PETITIONER WAS RESPONSIBLE FOR THE DECEPTION, THEREFORE HAD WAIVERED HIS RIGHTS TO ANY APPELLATE REVIEW, DENYING AN APPEAL. **THIS IS NOT TRUE.** THE QUESTION UNDER THE CODE OF JUDICIAL CONDUCT, BUT MOST OF ALL, THE EXTREME CHARGES FABRICATED BY COMRADE WEALTH'S WITNESSES, WHICH HAD NO EVIDENCE THAT COULD RISE TO LEVEL OF THE CHARGES, UNDER PA. 18 C.S.A. § 2702.

THIS HONORABLE COURT IS WELL AWARE OF THE FACT THAT RULE 1100, IS NOT BASED ON THE CHARGES OF A CRIME, NOR IS IT BASED ON WHETHER THE DEFENDANT IS PRECIPITATED TO BE GUILTY OR INNOCENT. **RULE 1100 IS THE GUARANTEE TO A SPEEDY TRIAL UNDER THE DUE PROCESS CLAUSE OF THE CONSTITUTION WHICH PROTECTS DEFENDANTS AGAINST INTENTIONAL AND PREJUDICIAL PREACCUSATION DELAY. THE 6th AMENDMENT'S SPEEDY TRIAL GUARANTEE. THE TIME LIMITATIONS IS SET FORTH IN RULE 1100, WITHOUT EXCUSE.** (PA.R.C.P.) RULE 1100 (2), (g) IF AT ANY TIME, IT IS DETERMINED THAT THE COMRADE WEALTH DID NOT EXERCISE DUE DILIGENCE, THE COURT SHALL DISMISS THE CHARGES AND DISCHARGE THE DEFENDANT.

WHEREFORE, PETITIONER RESPECTFULLY REQUEST THAT THIS HONORABLE COURT GRANT HIM HIS APPELLATE RIGHTS OR GRANT HIM THE RIGHT TO PROCEED ON APPEAL THROUGH HIS PETITION AND AMENDED PETITION UNDER THE POST CONVICTION RELIEF ACT, FOR THE PURPOSE OF REVIEW ON APPEAL AS OF FIRST RIGHT OF APPEAL. PA. 42 C.S.A. §§ 9101-9551. GIVING PETITIONER A FAIR OPPORTUNITY TO PRESENT THE ISSUES OF CONSTITUTIONAL VIOLATIONS WHICH OCCURRED DOING AND AFTER THIS PROCEEDING, WHICH RENDERED PETITIONER WITHOUT COUNSEL AND A RIGHT TO A FAIR TRIAL. TO GRANT PETITIONER A REVIEW OF THE FACTS PRESENTED WITHIN THIS PETITION, OR GRANT PETITIONER A NEW TRIAL OR DISMISSAL, BASED ON THE VIOLATIONS PRESENTED.

RESPECTFULLY SUBMITTED,

6. The DEFACTO of Rule 1100 and a violation of the Sixth Amendment of the United States Constitution, that states in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. In this instant cause the Rule should favor the defense, and not deny Due Process of Law under the Fourteenth Amendment Guarantees; and Equal Protections of Law.
7. A violation of due process right to appeal by Counsel , Senior Deputy Public Defender michael E. Duda, further prejudicing petitioner and creating a irrepar able harm to the cause of petitioner.
8. " WHEN CRIMINAL DEFENDANT EXCERISED HIS PROCEDURAL RIGHT AND SUCCESSFULLY ATTACKS CRIMINAL CONVICTION, STATES CANNOT RETALIATE AGAINST DEFENDANT BY SEEKING HARSHER PUNISHMENT."
U.S. V. Williams, 47 F.3d 658 (4th Cir, 1995).
9. " DUE PROCESS REQUIRES THAT TRIAL JUDGE'S ACTIONS NEVER EVER REACH A POINT WHERE IT APPEARS CLEAR TO THE JURY THAT THE COURT BELIEVES THE ACCUSED IS GUILTY."
U.S. V. Price, 13 F.3d 711 (3rd Cir. 1994), Jenkins V. Lane 977 F.3d 266 (7th Cir. 1992).
10. Judge must be fair to all parties and may not do or say anything that might prejudice either litigant in eyes of jury.
11. As found in U.S. V. Lai, 944 F.2d 1443 (9th Cir. 1991), an;
"ADMISSION OF EVIDENCE OF DEFENDANTS PRIOR CRIMES OR WRONGFUL ACT TO SHOW BAD CHARACTER OR PROPENSITY TO COMMIT CRIMES, IS PROHIBITED"
12. A right to a fair trial is basic requirement of due process and includes right of unbiased judge. (Houpl V. Dillared, 17 F.3d 285 (9th Cir. 1994))

LEGAL ARGUMENT

13. Petitioner avers that his due process rights and right to able counsel was violated in this instant cause. Counsel failed to appeal the case and failed to guarantee the Equal Protections of Law that are demanded and guaranteed in the United States Constitution, under the Sixth Amendment.
14. "THE DEFENDANT HAS BEEN DEPRIVED OF A SUBSTANTIAL RIGHT GIVEN TO HIM BY THE LAW IN FORCE AT THE TIME TO WHICH HIS GUILT RELATES."
United States v. Classic, Dred Scott V. Sandford. (see copy of Rule 1100 which applied to this instant case is fundimental.

15. Petitioner avers that he was denied a fair and impartial trial by jury, and effective assistance of counsel, when the jury was exposed to information improperly presented before it, and counsel's failure to object to the Jury's deliberation process.

16. Petitioner avers that throughout the proceedings in the lower court the defendant was represented by Micheal Duda, of the Public Defender's Office, who showed negligent and inept action by his failure to file the original appeal for Docket Number 1173-CD-95, thereby denying issues and due process to the petitioner.

Further the presiding Judge Kleinfeter, stated in open court that it was a matter of law for that counsel to appeal.

17. Petitioner avers that counsel was further ineffective in failing to demand a new trial or mistrial after evidence of a conviction 35 years prior to trial was introduced at the trial level, thereby, creating bias and extreme prejudice in sentencing, while denying pertinent informations and statement by the alleged victim and the cause of the crime.

18. Petitioner avers that counsel failed to call pertinent defense witnesses to make a validation of the credibility of petitioner's testimony, further the credibility of the witnesses themselves would have shown that petitioner was honest and upfront in his wish to have the truth come out, the witnesses (Lt. John Gashart, Officers Brian Jackson, Willie Holland, and Officer Arnold, plus Mary beth of the Dauphin County public Defender's Office) All these uncalled witnesses would have aided and assisted in the instant cause.

Petitioner avers that the crux of this cause is that trial counsel, Micheal E. Duda, failed in his obligations and duties, counsel denied petitioner Due Process of law, and Equal Protections of Law by denying the basic and most important Guarantees of the United States Constitution and furthered the incompetence by failing to appeal, call for mistrial, and question the denial of justice in this instant cause.

Petitioner further avers that Trial Judge failed to provide the protections he swore to uphold when administration of the Oath of Office was taken by the Judge. Wherefore the reasons above and held within this case, Petitioner Prays this Honorable Court Grant the Prayer of the writ in the Petitioner's favor.

Respectfully submitted,

Joe King, pro se

Joe King #CZ9898

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 0364 M.D. Alloc. Dkt. 2000

Respondent : Petition for Allowance of Appeal from the
: Order of the Superior Court

v.

JOHN FLEMING, A/K/A JOE KING,

Petitioner

ORDER

PER CURIAM:

AND NOW, this 22nd day of August, 2000, the Petition for Allowance of Appeal is
hereby DENIED.

TRUE & CORRECT COPY

ATTEST AUG 23 2000
Shirley J. Phipps
SHIRLEY J. PHIPPS
APPELLATE CLERK

DC 300B (PART I)

JUL 1991

CORRECTED COMMITMENT
COURT COMMITMENT

STATE OR COUNTY CORRECTIONAL INSTITUTION

Commonwealth of Pennsylvania

VS

City, Pa

COMMITMENT MADE (DATE FIRST INITIAL SETTING)

DATE OF BIRTH	NO	SEX
7-4-71		

JUDICIAL DISTRICT, COUNTY MAGISTRATE, JUDGE

Drighin

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

NOTE: Additional supply of this form available at above address

☐ DC 300B (Part II) attached

COURT OF INITIAL JURISDICTION	<input type="checkbox"/>	COMMON PLEAS	<input checked="" type="checkbox"/>
COURT NUMBER	80 (1) 1983		DATE - TERM
			8-14-91

The above defendant after ☒ pleading guilty ☐ nolo contendere ☐ being found guilty was on
8-14-91, 19 sentenced by Judge District Justice Marixen to a term of
not less than 1 years 6 months days nor more than 3 years months days, or
for the offense of Unl. Delivery

(Section 78-113 of the Crimes Code) or (other statute)

It is further ordered that the said defendant be delivered by the proper authority to and treated as the law

directed at the Drighin County Prison facility located at 70 Mill Road Bg., Pa. 17111

TIME	AMOUNT \$ (0.00)	COSTS	AMOUNT \$ N/A	RESTITUTION	N
To Be Paid To		To Be Paid By			
<input checked="" type="checkbox"/> COUNTY	<input type="checkbox"/> COMMONWEALTH	<input type="checkbox"/> COUNTY	<input type="checkbox"/> DEFENDANT		
CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT FORBIDDER OR DEVIANT TIME)					EFFECTIVE DATE OF SENTENCE
Credit for time served from 4-21-83 to 5-9-83 (18 Days) and 10-18-83 to 12-6-83 (50 Days) and 5-3-91 to 8-14-91 (104 Days)					8-14-91

This form shall be deemed to conform to any existing contract effective the date of imposition unless otherwise stipulated below

DEFENDANT'S ATTORNEY

Elm infelter

DEFENSE ATTORNEY

Brenton

COURT RECEIVED

L. Kline

DISPOSITION OF NON INCARCERATION (OFFENSES)

(THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)

In witness, whereof I have hereunto set my hand and seal of said
court, this 30th day of March 19 92

AUTHORIZED SIGNATURE

to be hereby granted to exempt the prisoner which might result from placing before jury charges which appear to be warranted.

* October 17, 1983. Defendant's Preliminary Post-Trial Motion filed.

* OCT 17 1983 Pre-Trial Motion Hearing - Motion Granted. Motion for Mistrial - Denied.

M. Mason
K. Klinefelter
J. Zilli

OCT 17 1983

1983, Defendant having been arraigned in open Court pleads not guilty, whereupon trial ordered, jury called, came twelve good and lawful men and women all of Dauphin County, whom having been sworn to find the defendant according to law do say:-

OCT 18 1983, 1983, that they find the defendant Guilty

Bail raised to \$25,000

November 17, 1983. Order of Court filed. Motion of Defendant to be transferred to Dauphin County Jail for 30 days to file additional motions.

October 31, 1983. Motion to dismiss/jury nullification with prejudice filed.

M. Mason
K. Klinefelter
J. Zilli

November 22, 1983 - Transcript of Proceedings before the Honorable Judge Clarence J. Morrison on 10/17/83 in Dauphin County Court House, lodged.

November 30, 1983 - Defendant's Supplemental Post-Trial Motion filed.

December 6, 1983 - Bail was posted for the above debt in the amount of \$25,000 for this charge only. An additional \$25,000 was posted on another case number. (Total \$50,000 bail.) Willie Jacobs of 62 N. 11th St. P.O. Box 100, York, Pa. 17404, was asked to post the bail from D.C. P. (also 50 N. 11th St. York, Pa. 17404).

M. Mason

JAN 6 1984 - Transcript of Proceedings of Oct. 17, 1983, filed.

Feb. 9, 1984 - Brief in Support of Defendant's Post-Trial Motion, filed.

May 2, 1984. Commenced the Brief Post Trial Motion filed.

May 6, 1984. Order of Court filed Argument on Post Trial Motion to be heard.

May 21, 1984 at 1:30 P.M. Courtroom 3.

September 22, 1984. Opinion and Order of Court filed and defendant to be sentenced.

M. Mason

September 28, 1984 - Request for Pre-Sentence Investigation Report, filed.

REC 15 100 CAPIAS AWARDED & ISSUED. FORFEIT PAID

May 3, 1985 - W.O. Capias Ordered and returned.

June 28, 1985 - Motion To Dismiss, filed.

6-30-85 - Continuance to Aug 5, 1985. Rule 11a2 waived.

DC 300B (PART I)

JULY 1991

CORRECTED COMMITMENT
COURT COMMITMENT

STATE OR COUNTY CORRECTIONAL INSTITUTION

Commonwealth of Pennsylvania

vs.

City, Pa.

COMMITMENT DATE (DAY, MONTH, YEAR, AM/PM)

DATE OF BIRTH	TIME
7-1-91	

JUDICIAL COUNTY MANAGERIAL DISTRICT

Dolphin

Type or Print Legibly

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

NOTE: Additional supply of this form available at above address

☐ DC 300B (Part II) attached

COURT OF INITIAL JURISDICTION	<input type="checkbox"/>	COMMON PLEAS	<input checked="" type="checkbox"/>
COURT NUMBER	80 (1) 1983		DATE TERM
			8-14-91

The above defendant after ☒ pleading guilty ☐ nolo contendere ☐ being found guilty was on
8-14-91, 19 sentenced by Judge District Justice Mariani to a term of
not less than 1 years 6 months days nor more than 3 years months days, or
for the offense of Unl. Delivery

(Section 80-113 of the Crimes Code) or (other statute)

It is further ordered that the said defendant be delivered by the proper authority to and treated as the law

directs at the Dolphin County Prison facility located at 301 Mill Run Hg., Pa. 17111

COPIES	AMOUNT	RESTITUTION
AMOUNT \$ 10.00	N/A	N
To Be Paid To	To Be Paid By	
<input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> COMMONWEALTH	<input type="checkbox"/> COUNTY <input type="checkbox"/> DEFENDANT	

CREDIT FOR TIME SERVED (EXPLANATION OF CREDIT FOR TIME SERVED OR DELETED TIME)

Credit for time served from 4-21-83 to 5-9-83 (18 Days) and
10-18-83 to 12-6-83 (50 Days) and 5-3-91 to 8-14-91 (104 Days)

EFFECTIVE DATE OF SENTENCE

8-14-91

This form shall be deemed to conform to any existing sentence affecting the date of expiration unless otherwise stipulated below

PROSECUTING ATTORNEY

El Infelter

DEFENSE ATTORNEY

Brenten

JURY REPORTER

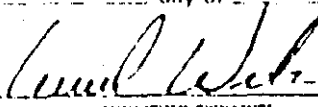
L. Elzy

DISPOSITION OF NON-INCARCERATION OFFENSE(S)

(THIS BLOCK NOT TO BE USED FOR INCARCERATION OFFENSE)

In witness, whereof I have hereunto set my hand and seal of said

court, this 30th day of March 19 92



AUTHORIZED SIGNATURE

PROOF OF SERVICE

I, the undersigned, verify that I have served a copy of this petition and any attachments thereof by U.S. mail to the following parties at the below listed addresses:

United States District Court
Middle District of Pennsylvania
Federal Building
Harrisburg, PA 17108

Office of the Attorney General
Attorney General: Mike Fisher
16th Floor, Strawberry Square
Harrisburg, PA 17120

Raymond Collera
Superintendent
S.C.I. Waymart
P.O. Box 256
RR #6
Waymart, PA 18472

Respectfully submitted,

Dated: 7-17-2000



S.C.I. Waymart
P.O. Box 256
Waymart, PA 18472-0256